RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-4 NET TAXABLE INCOME (INDIVIDUAL)

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560-7-4-.02 Procedures Governing Retirement Income Exclusion. Amended.

(1) **Eligibility.** Eligibility is provided in O.C.G.A. § 48-7-27.

(2) **Married Filing Jointly.** In the case of a married couple filing jointly, each spouse shall if otherwise qualified be individually entitled to exclude retirement income received by that spouse up to the exclusion amount for such spouse. Taxpayers must qualify on a separate basis. One spouse may not use any income attributable to the other spouse in the calculation of his or her retirement exclusion. If property is jointly owned, income derived is allocated to each taxpayer at 50 percent of the total.

(3) **Effect on Other Adjustments.** The exclusion provided for in this paragraph shall not apply to or affect and shall be in addition to those adjustments to net income provided for under O.C.G.A. §§ 48-7-27 and 48-7-28.2. Accordingly, the other income and loss adjustments to Georgia taxable income that are required by O.C.G.A. §§ 48-7-27 and 48-7-28.2 shall be added or

subtracted first before computing the retirement income exclusion. Only retirement income that is included in Georgia taxable income shall be included when computing the retirement income exclusion.

(4) **Computation of the Exclusion.**

(a) The amount of the exclusion shall be determined based on O.C.G.A. § 48-7-27(a)(5)(A).

(b) Retirement Income.

1. For the purpose of this paragraph, retirement income shall be divided into two parts, the unearned income portion of the retirement income exclusion and the earned income portion of the retirement income exclusion. The unearned income portion of the retirement income exclusion shall include interest income, dividend income, net income or loss from rental property that is not subject to Federal FICA tax or Federal self employment tax, partnership income that is not subject to Federal FICA tax or Federal self employment tax, income from an S-corporation in which the taxpayer or the taxpayer's spouse does not materially participate and non trade or business income from an S-corporation in which the taxpayer or the taxpayer's spouse materially participates, capital gains or losses, income from royalties, income from pensions and annuities, and other similar income. The earned income portion of the retirement income exclusion is limited to no more than $4,000.00 of an individual's earned income. This shall include, but not be limited to, the net business income earned by an individual from any trade or business carried on by such individual, net income or loss from rental property that is subject to Federal FICA tax or Federal self employment tax, partnership income that is subject to Federal FICA tax or Federal self employment tax, trade or business income from an S-corporation in which the taxpayer or

the taxpayer's spouse materially participates, wages, salaries, tips, and other employer compensation. For purposes of this paragraph, material participation shall be determined in the same manner as provided in Internal Revenue Code Section 469.

2. Retirement income shall not include income received directly or indirectly from lotteries, gambling, illegal sources, or similar income. Indirect income from lotteries, gambling, illegal sources, or similar income shall include but not be limited to such income received through partnerships, S corporations, limited liability companies, trusts, estates, etc.

(c) The earned income portion of the retirement income exclusion shall be computed separately from the unearned income portion of the retirement income exclusion. For both the earned income portion of the retirement income exclusion and the unearned income portion of the retirement income exclusion, losses shall be offset against income. If after each portion has been separately computed, either portion is less than zero, the portion that is less than zero shall not be offset against the other portion. For example, if the earned income portion of the retirement exclusion is a negative $3,000 and the unearned income portion of the retirement income exclusion is a positive $9,000, the total retirement income exclusion that is allowed shall be $9,000.

(5) **Part-Year Residents and Nonresidents.**

(a) Part-year residents and nonresidents must prorate the retirement income exclusion. The earned income portion and the unearned income portion shall each be separately prorated. Such portions shall be prorated using the ratio of Georgia source retirement income to retirement income computed as if the taxpayer were a resident of Georgia for the entire year.

(b) Example 1:

1. A taxpayer that is 62 years old has $1,000 of earned retirement income that is sourced to Georgia. The taxpayer has total earned retirement income of $10,000 computed as if the taxpayer were a resident of Georgia for the entire year. The earned income portion of the retirement exclusion is $400 ($1,000 / $10,000 x $4,000).

2. The same taxpayer also has $5,000 of unearned retirement income that is sourced to Georgia. The taxpayer has total unearned retirement income of $50,000 computed as if the taxpayer were a resident of Georgia for the entire year. The unearned income portion of the retirement exclusion is $3,100 ($5,000 / $50,000 x $31,000 (maximum retirement exclusion of $35,000 less the maximum earned income portion of $4,000)). The taxpayer also has $7,000 of Georgia lottery winnings which are not retirement income and therefore are not considered when computing the retirement exclusion.

(c) Example 2:

1. A taxpayer that is 62 years old has $1,000 of earned retirement income that is sourced to Georgia. The taxpayer has total earned retirement income of $2,000 computed as if the taxpayer were a resident of Georgia for the entire year. The earned income portion of the retirement exclusion is $1,000 ($1,000 / $2,000 x $2,000).

2. The same taxpayer also has $5,000 of unearned retirement income that is sourced to Georgia. The taxpayer has total unearned retirement income of $50,000 computed as if the taxpayer were a resident of Georgia for the entire year. The unearned income portion of the retirement exclusion is $3,300 ($5,000 / $50,000 x

$33,000 (maximum retirement exclusion of $35,000 less the earned income of $2,000)). The taxpayer also has $7,000 of Georgia lottery winnings which are not retirement income and therefore are not considered when computing the retirement exclusion.

(6) Effective Date. The provisions set forth in this regulation will apply to taxable years beginning on or after January 1, 2011. Taxable years beginning before January 1, 2011 will be governed by the regulations of Chapter 560-7 as they exist before January 1, 2011 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority O.C.G.A. §§ 48-2-12 and 48-7-27.